



BARNES & THORNBURG LLP

11 South Meridian Street  
Indianapolis, Indiana  
46204  
(317) 236-1313  
(317) 231-7433 Fax

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Customer No. 23643

Group: 1743

Confirmation No.: 3322

Application No.: 09/516,758

Invention: HOSPITAL METER SYSTEM

Inventor: James R. Kurtcock, et al.

Filed: March 1, 2000

Attorney

Docket: 5727-63370

Examiner: Lyle A. Alexander

Certificate Under 37 CFR 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on June 6, 2006

(Signature)

Kim Tyree

(Printed Name)

APPEAL BRIEF

Mail Stop Appeal Brief  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This appeal brief is submitted in triplicate in furtherance of the appeal taken April 11, 2006. The fee of \$500 for filing an appeal brief having already been paid with the appeal brief mailed October 28, 2005, Appellants submit that no additional fee is due in connection with this notice of appeal. However, should any additional fees be found necessary to constitute this a timely filed appeal brief, the Commissioner is hereby authorized to charge any such fees, or credit any overpayment, to Deposit Account No. 10-0435, with reference to Appellants' undersigned counsel's file 5727-63370. A duplicate copy of this authorization is enclosed for that purpose.

### REAL PARTY IN INTEREST

The real party in interest is Roche Diagnostics Operations, Inc., by virtue of an assignment from the inventors to Roche Diagnostics Corporation recorded April 27, 2000 in the records of the Patent and Trademark Office on patent record reel 010779, beginning at frame 0022, and an assignment from Roche Diagnostics Corporation to Roche Diagnostics Operations, Inc. recorded September 2, 2004 in the records of the Patent and Trademark Office on patent record reel 015215, beginning at frame 0061.

### RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

### STATUS OF CLAIMS

Claims 1-25 are cancelled without prejudice to Appellants' right to pursue these claims in (a) future divisional application(s). Claims 26-49 are pending in this application. Of claims 26-49, the Examiner has withdrawn claims 37-49 from consideration as being directed to a non-elected invention. Appellants reserve the right to pursue these non-elected claims in (a) future divisional application(s). The remaining claims 26-36 are rejected. The rejection of claims 26-36 is appealed.

### STATUS OF AMENDMENTS

No amendments were filed subsequent to final rejection.

### SUMMARY OF CLAIMED SUBJECT MATTER

The invention may best be understood by referring to the following copies of appealed claims 26-36, annotated with parenthetical reference numbers and related notes from the detailed description.

With reference to claim 1, the invention is a healthcare data management system (20) for use with an instrument (22) for determining the concentration of a medically significant component (for example, glucose concentration; page 6, lines 19-23 of Appellants' specification) of a body fluid (for example, blood; page 6, lines 19-23 of Appellants' specification). The system (20) includes a cradle (30) for receiving the instrument (22), and an accessory box (110) for receiving the cradle (30), the accessory box (110) including a housing (112, 114, 116) and a carrying handle (150) pivotally coupled (158, 122, 122, 124, 124) to the housing (112, 114, 116). The carrying handle (150) includes two

ends (154, 156). One (154) of the ends (154, 156) includes a number of yieldable locking positions (132, 136, 124, 126, 160, 162, see page 9, line 27 through page 10, line 12 of Appellants' specification) for the handle (150) with respect to the housing (112, 114, 116).

With reference to claim 27, the invention is the apparatus (20) of claim 26 further including a non-yieldable locking position (160, 164, see page 9, line 27 through page 10, line 12 of Appellants' specification) of the handle (150) with respect to the housing (112, 114, 116).

With reference to claim 28, the invention is the apparatus (20) of claim 27 wherein the handle (150) includes a feature (169) for engagement with the cradle (30, 167) when the cradle (30) engages the accessory box (110) and the handle (150) is in the non-yieldable locking position (160, 164, see page 9, line 27 through page 10, line 12 of Appellants' specification).

With reference to claim 29, the invention is the apparatus (20) of claim 26 wherein the accessory box (110) includes a drawer (176) accessible from two opposite sides of the accessory box (110), the drawer (176) including a stop (178) for reducing the likelihood of accidental disengagement of the drawer (176) from the accessory box (110) when the accessory box (110) is withdrawn from either of said two opposite sides (see page 10, lines 19-30 of Appellants' specification).

With reference to claim 30, the invention is the apparatus (20) of claim 26 wherein the accessory box (110) includes a drawer (176) accessible from two opposite sides of the accessory box (110), the drawer (176) including latches (184) to reduce the likelihood of inadvertent opening of the drawer (176).

With reference to claim 31, the invention is the apparatus (20) of claim 26 wherein one of the ends (154 or 156) includes a button (132) which is yieldably urged into engagement with one of a number of depressions (162) which define the yieldable locking positions of the handle (150).

With reference to claim 32, the invention is the apparatus (20) of claim 31 wherein said one (154) of the ends (154, 156) further includes an opening (164) which defines a non-yieldable locking position (160, 164, see page 9, line 27 through page 10, line 12 of Appellants' specification) of the handle (150).

With reference to claim 33, the invention is the apparatus (20) of claim 31 wherein the bottoms of the depressions (162) are formed to include ramps to permit force on the handle (150) to move the handle (150) among the yieldable locking positions defined by the depressions (162) (see page 9, line 29 through page 10, line 3 of Appellants' specification).

specification).

With reference to claim 34, the invention is the apparatus (20) of claim 32 wherein the opening (164) includes a sidewall (see page 10, lines 3-4 of the Appellants' specification) which defines the non-yieldable locking position (160, 164, see page 9, line 27 through page 10, line 12 of Appellants' specification), the sidewall (see page 10, lines 3-4 of the Appellants' specification) being configured to permit locking of the handle (150) in the non-yieldable locking position (160, 164, see page 9, line 27 through page 10, line 12 of Appellants' specification).

With reference to claim 35, the invention is the apparatus (20) of claim 34 wherein the opening (164) permits access to the button (132) to permit movement of the handle (150) from the non-yieldable locking position (160, 164, see page 9, line 27 through page 10, line 12 of Appellants' specification).

With reference to claim 36, the invention is the apparatus (20) of claim 26 wherein at least one of the handle (150) and the cradle (30) includes a feature (167, 169) for engagement with the other of the cradle (30) and the handle (150) when the cradle (30) engages the accessory box (110) and the handle (150) is in the non-yieldable locking position (160, 164, see page 9, line 27 through page 10, line 12 of Appellants' specification).

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to be reviewed by the Board are whether claims 26-36 would have been obvious under 35 U.S.C. § 103 in view of Holmes U. S. Patent 5,371,687 (hereinafter Holmes I), Holmes U. S. Patent 5,594,906 (hereinafter Holmes II) or Kelly PCT Publication WO 94/13198 (hereinafter Kelly), taken alone or in combination with Magnant U. S. Patent 5,787,839 (hereinafter Magnant) or Baumgartner U. S. Patent 5,232,796 (hereinafter Baumgartner).

#### ARGUMENT

##### I. NEITHER HOLMES I NOR HOLMES II NOR KELLY WOULD HAVE RENDERED THE PRESENT CLAIMS 35 U. S. C. § 103 OBVIOUS

The Examiner rejected claims 26-36 under 35 U.S.C. § 103 as obvious in view of Holmes I or Holmes II or Kelly. The Examiner takes the position that Holmes I, Holmes II and Kelly "teach health care data management systems that test a specific body fluid,

process, display and store the data. These systems use a plurality of modules that have been read on the claimed ports, couplings and cradles. These references teach use of a bar code reader and teach handles to carry the units. [Holmes I and Holmes II] teach a drawer (72) that is accessible from the front left side and right side which has been read on the claimed accessible from two opposite sides of the accessory box (e.g. the left and right sides of the box are opposite each other)” The Examiner concedes that “[t]hese references are silent to the claimed ‘yieldable locking positions for the handle with respect to the housing’.” However, the Examiner takes the position that “[h]andles that lock in a plurality of different positions are notoriously well known in the art. Lockable handles are advantageous because the desired position of the handle can be maintained and the handle can (sic -- be) locked (sic -- in) a suitable position when not in use. Additionally, ‘buttons’ corresponding to a particular ‘recess’ are well known as a robust and inexpensive means for locking. The ‘buttons’ are very user friendly and desirable for their simplicity.”

The Examiner concludes this rejection with the observation that “[i]t would have been within the skill of the art to modify [Holmes I, Holmes II or Kelly] and use a handle that locks in a plurality of different positions using a button/recess means for locking to gain the above advantages.”

Appellants’ first question is, “What art?” The Examiner takes the position that “[h]andles that lock in a plurality of different positions are notoriously well known in the art.” However, the Examiner cites no art to support this position with respect to the 35 U. S. C. 103 rejections based upon Holmes I or Holmes II or Kelly. The Examiner concedes that “[Holmes I, Holmes II and Kelly] are silent to the claimed ‘yieldable locking positions for the handle with respect to the housing’.” In fact, even in the rejections based upon combination of one of Holmes I, Holmes II or Kelly with other art, the references the Examiner has had to rely upon are Magnant, a patent on a dog lunch box, and Baumgartner, a patent on a carrier for vehicle batteries. More about Magnant and Baumgartner later. For now, suffice it to say that if the *relevant* art were “notoriously well known,” as the Examiner would have the Board believe, it certainly would be no burden for the Examiner to cite it. The Examiner has not, from which Appellants believe the Board may conclude that the Examiner’s position is untenable, that “[h]andles that lock in a plurality of different positions” are not notoriously well known *in the art to which this invention pertains*. In so concluding, the Board would dispense with this rejection which, as nearly as can be discerned from Holmes I, Holmes II and Kelly, is not based upon any fact, but rather, upon the Examiner’s conjecture.

The claims are distinguished from each of Holmes I, Holmes II and Kelly,

taken individually, in the following respects:

#### CLAIM 26

Among other limitations, claim 26 specifically requires an accessory box for receiving [a] cradle, the accessory box including a housing and a carrying handle pivotally coupled to the housing, the carrying handle having two ends, one of the ends including a number of yieldable locking positions for the handle with respect to the housing.

Holmes I and II Fig. 2 show a remote glucose test station 40 including a base 66 and a cover 74 as well as a handle attached to the cover 74. However, there is no description in either Holmes I or Holmes II of any “yieldable locking positions for the handle with respect to the housing,” all as recited in Appellants’ independent claim 26.

The only handle shown in Kelly is an unnumbered element shown in Fig. 1B. However, it is not pivotally coupled to any housing, nor does it have any yieldable locking positions with respect to any housing.

In the rejection based upon any one of Holmes I, Holmes II or Kelly by itself, no art has been cited to support the proposition that “[h]andles that lock in a plurality of different positions are notoriously well known in the art.” Again, if the relevant art were “notoriously well known,” it certainly would be no burden for the Examiner to cite it. The Examiner has not, from which Appellants believe the Board may conclude that “[h]andles that lock in a plurality of different positions” are not notoriously well known in the art to which this invention pertains. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 26 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

#### CLAIM 27

Claim 27 includes “a non-yieldable locking position of the handle with respect to the housing.” There is no disclosure or suggestion in any of Holmes I or Holmes II or Kelly of any “yieldable locking positions for the handle with respect to the housing,” all as recited in Appellants’ independent claim 26, in combination with “a non-yieldable locking position of the handle with respect to the housing.” Nowhere does any of Holmes I, Holmes II or Kelly disclose or suggest a handle having the combination of “a number of yieldable locking positions for the handle with respect to the housing [and a] non-yieldable locking

position . . . with respect to the housing.” Again, that which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 27 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

#### CLAIM 28

Claim 28 requires that “the handle include[ ] a feature for engagement with the cradle when the cradle engages the accessory box and the handle is in the non-yieldable locking position.” There is no disclosure or suggestion in any of Holmes I or Holmes II or Kelly of a handle having the combination of “a number of yieldable locking positions for the handle with respect to the housing [and a] non-yieldable locking position [ ] with respect to the housing,” all as recited in Appellants’ independent claim 26 and dependent claim 27 from which claim 28 depends, in combination with “a feature for engagement with the cradle when the cradle engages the accessory box and the handle is in the non-yieldable locking position,” as recited in claim 28. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 28 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

#### CLAIM 29

Claim 29 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Further, claim 29 requires “a cradle for receiving [an] instrument, and an accessory box for receiving the cradle,” the accessory box including “a drawer accessible from two opposite sides of the accessory box, the drawer including a stop for reducing the likelihood of accidental disengagement of the drawer from the accessory box when the accessory box is withdrawn from either of said two opposite sides.” Contrary to the Examiner’s position, the drawers in Holmes I and Holmes II are only accessible from one side of the accessory box, not from two opposite sides thereof. Kelly neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 29. Therefore, none of Holmes I, Holmes II or Kelly discloses or suggests required elements of claim 29. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 29 based upon Holmes I, Holmes II or

Kelly is in error, and should be reversed.

#### CLAIM 30

Claim 30 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Further, claim 30 requires the accessory box to include “a drawer accessible from two opposite sides of the accessory box, the drawer including latches to reduce the likelihood of inadvertent opening of the drawer.” As discussed above in connection with claim 29, neither Holmes I nor Holmes II nor Kelly discloses or suggests a drawer accessible from “two opposite sides of the accessory box” as recited in claim 30. Contrary to the Examiner’s position, the drawers in Holmes I and Holmes II are only accessible from one side of the accessory box. Kelly neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 30. Further, none of Holmes I, Holmes II or Kelly discloses or suggests a drawer accessible from two opposite sides of the accessory box, the drawer including latches to reduce the likelihood of inadvertent opening of the drawer. Therefore, none of Holmes I, Holmes II or Kelly discloses or suggests required elements of claim 30. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 30 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

#### CLAIM 31

Claim 31 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Further, claim 31 requires that “one of the ends include[ ] a button which is yieldably urged into engagement with one of a number of depressions which define the yieldable locking positions of the handle.” None of Holmes I or Holmes II or Kelly discloses or suggests “a button which is yieldably urged into engagement with one of a number of depressions which define the yieldable locking positions of the handle,” as specifically recited in claim 31. Therefore, none of Holmes I, Holmes II or Kelly discloses or suggests required elements of claim 31. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 31 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

## CLAIM 32

Claim 32 depends from claim 31, which depends from claim 26. Claim 32 thus requires that “the accessory box includ[e] a housing and a carrying handle pivotally coupled to the housing, [that] the carrying handle hav[e] two ends, [that] one of the ends includ[e] a number of yieldable locking positions for the handle with respect to the housing,” that “one of the ends include[ ] a button which is yieldably urged into engagement with one of a number of depressions which define the yieldable locking positions of the handle,” and that “one of the ends further include[ ] an opening which defines a non-yieldable locking position of the handle.” Nowhere does Holmes I or Holmes II or Kelly disclose or suggest a button on the handle shown in Fig. 2 of Holmes I and Holmes II or Fig. 1B of Kelly, or “a number of depressions which define the yieldable locking positions of the handle” or that “one of the ends further includes an opening which defines a non-yieldable locking position of the handle” into which the button may be urged into engagement. Accordingly, none of Holmes I, Holmes II or Kelly discloses or suggests required elements of claim 32. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 32 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

## CLAIM 33

Claim 33 depends from claim 31, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26 and 31. Further, claim 33 requires that “the bottoms of the depressions are formed to include ramps to permit force on the handle to move the handle among the yieldable locking positions defined by the depressions.” Nowhere does Holmes I, Holmes II or Kelly disclose or suggest any depressions for receiving a button, let alone depressions including “ramps [which] permit force on the handle to move the handle among the yieldable locking positions defined by the depressions.” Accordingly, none of Holmes I, Holmes II or Kelly discloses or suggests required elements of claim 33. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 33 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

#### CLAIM 34

Claim 34 depends from claim 32, which depends from claim 31, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26, 31, and 32. Further, claim 34 requires that the “opening [of one of the ends of the carrying handle] include[ ] a sidewall which defines the non-yieldable locking position, the sidewall being configured to permit locking of the handle in the non-yieldable locking position.” Nowhere does Holmes I, Holmes II or Kelly disclose or suggest any sidewall of any opening which permits locking of the handle shown in Fig. 2 of Holmes I and Holmes II or Fig. 1B of Kelly in a non-yieldable locking position. Accordingly, none of Holmes I, Holmes II or Kelly discloses or suggests required elements of claim 34. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 34 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

#### CLAIM 35

Claim 35 depends from claim 34, which depends from claim 32, which depends from claim 31, which depends from claim 26. Claim 35 is thus entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26, 31, 32 and 34. Further, claim 35 requires that the “opening permit[ ] access to the button to permit movement of the handle from the non-yieldable locking position.” Nowhere does Holmes I, Holmes II or Kelly disclose or suggest that the handle shown in Fig. 2 of Holmes I and Holmes II or the handle shown in Fig. 1B of Kelly, have an opening which permits access to a button to permit movement of the handle from a non-yieldable locking position. Accordingly, none of Holmes I, Holmes II or Kelly discloses or suggests required elements of claim 35. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 35 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

#### CLAIM 36

Claim 36 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claim 26. Further, claim 36 requires that “at least one of the handle and the cradle include[ ] a feature

for engagement with the other of the cradle and the handle when the cradle engages the accessory box and the handle is in the non-yieldable locking position.” There is no description in Holmes I or Holmes II or Kelly of any a handle having the combination of “a number of yieldable locking positions for the handle with respect to the housing [and] at least one of the handle and the cradle includ[ing] a feature for engagement with the other of the cradle and the handle when the cradle engages the accessory box and the handle is in the non-yieldable locking position,” all as recited in claim 36. Holmes I, Holmes II and Kelly fail to disclose required elements of claim 36. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 36 based upon Holmes I, Holmes II or Kelly is in error, and should be reversed.

II. NO COMBINATION OF HOLMES I OR HOLMES II OR  
KELLY WITH MAGNANT WOULD HAVE RENDERED  
THE PRESENT CLAIMS 35 U. S. C. § 103 OBVIOUS

The Examiner rejected claims 26-36 under 35 U. S. C. § 103 based upon the combination of any of Holmes I or Holmes II or Kelly with Magnant. Again, the Examiner concedes that “[Holmes I, Holmes II and Kelly] are silent to the claimed ‘yieldable locking positions for the handle with respect to the housing’,” and Appellants’ previous arguments concerning the non-obviousness of claims 26-36 over Holmes I, Holmes II and Kelly are incorporated here by reference. Magnant “relates to pet devices, and in particular, to pet devices that are designed as convenient multiple compartment carry-all food and water containers to be used by owners and trainers on day trips in order to provide a supply of food and drinking water for animals.” Magnant, col. 1, lines 14-18. The present claims relate to structures for “[a] healthcare data management system for use with an instrument for determining the concentration of a medically significant component of a body fluid,” such as, for example, a glucose test instrument for determining the glucose concentration of human blood.

The test for determining whether prior art is analogous for the purpose of determining whether the art can appropriately serve as a basis for a 35 U. S. C. §103 rejection is set forth in, for example, In re Clay, 23 USPQ 2d 1058 (Fed. Cir. 1992) and In re Oetiker, 24 USPQ 2d 1443 (Fed. Cir. 1992). In Clay, for example, the Court observed that

Two criteria have evolved for determining whether prior art is

analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved (citing *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979)). Clay at 1060.

In Clay, the issue was whether a reference (Sydansk) which disclosed a process using a gel for reducing the permeability of hydrocarbon-bearing formations (useful in the recovery of oil from an oil field, for example) was analogous art to Clay's claimed process for using a similar gel to fill a dead volume in the bottom of a liquid hydrocarbon storage tank. Clay, supra. The Court observed that

Sydansk cannot be considered to be within Clay's field of endeavor merely because both relate to the petroleum industry. Sydansk teaches the use of a gel in unconfined and irregular volumes within generally underground natural oil-bearing formations to channel flow in a desired direction; Clay teaches the introduction of gel to the confined dead volume of a man-made storage tank. The Sydansk process operates in extreme conditions, with petroleum formation temperatures as high as 115°C and at significant well bore pressures; Clay's process apparently operates at ambient temperature and atmospheric pressure. Clay's field of endeavor is the *storage* of refined liquid hydrocarbons. The field of endeavor of Sydansk's invention, on the other hand, is the *extraction* of crude petroleum. The Board clearly erred in considering Sydansk to be within the same field of endeavor as Clay's. Clay, supra., emphasis the Court's.

The Court noted that

Even though the art disclosed in Sydansk is not within Clay's field of endeavor, the reference may still properly be combined with Hetherington [another reference] if it is reasonably pertinent to the problem Clay attempts to solve. *In re Wood*, 599 F.2d at 1036, 202 USPQ at 174. A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. Clay at 1060-61.

The Court analyzed Sydansk's pertinence to the problem Clay was trying to solve, observing that

Sydansk's gel treatment of underground formations functions

to fill anomalies so as to improve flow profiles and sweep efficiencies of injection and production fluids through a formation, while Clay's gel functions to displace liquid product from the dead volume of a storage tank. Clay at 1061, footnote omitted,

and concluded that

A person having ordinary skill in the art would not reasonably have expected to solve the problem of dead volume in tanks for storing refined petroleum by considering a reference dealing with plugging underground formation anomalies. The Board's finding to the contrary is clearly erroneous. Since Sydansk is non-analogous art, the rejection over Hetherington in view of Sydansk cannot be sustained. Clay, *supra*.

In In re Oetiker, *supra*., Oetiker's invention was an improvement in a hose clamp which was the subject of a prior patent ('004) to Oetiker. The improvement added another feature, a preassembly hook to the '004 patent clamp. The other reference (Lauro) the Examiner combined with the '004 patent teaching to support the 35 U.S.C. §103 rejection related to a plastic hook and eye fastener for garments. The Court noted that

The examiner explained further by stating that Appellant's device as disclosed could be utilized as part of a garment. The Board did not repeat or support the examiner's argument, or discuss its relevance. Indeed, the argument is not supportable. However, the Board held that the Lauro reference, although not within the appellant's specific field of endeavor is nonetheless analogous art because it relates to a hooking problem, as does Oetiker's invention.

The Board apparently reasoned that all hooking problems are analogous. Oetiker at 1445.

The Court again observed that

In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *See In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986). Patent examination is necessarily conducted by hindsight, with complete knowledge of the applicant's invention, and the courts have recognized the subjective aspects of determining whether an inventor would reasonably be motivated to go to the field in which the examiner found the reference, in order to solve the problem confronting the inventor. We have reminded ourselves and the PTO that it is necessary to consider "the reality of the circumstances", *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ

171, 174 (CCPA 1979) - in other words, common sense - in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.

It has not been shown that a person of ordinary skill, seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness.

\* \* \*

We conclude that the references on which the Board relied were improperly combined. Accordingly, the Board erred in holding the claims unpatentable under section 103. The rejection of claims 1-4 and 16-21 is *REVERSED*. Oetiker at 1445-46.

#### CLAIM 26

Continuing with the analysis, then, among other limitations, claim 26 specifically requires

an accessory box for receiving [a] cradle, the accessory box including a housing and a carrying handle pivotally coupled to the housing, the carrying handle having two ends, one of the ends including a number of yieldable locking positions for the handle with respect to the housing.

To paraphrase the Federal Circuit in Oetiker, patent examination is necessarily conducted by hindsight, with complete knowledge of the applicant's invention, and the courts have recognized the subjective aspects of determining whether an inventor would reasonably be motivated to go to the field in which the examiner found the reference, in order to solve the problem confronting the inventor. We have reminded ourselves that it is necessary to consider "the reality of the circumstances," *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979) - in other words, common sense - in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor. It has not been shown, nor do Appellants believe that it can be shown, that a person of ordinary skill in the art of healthcare data management systems for use with, for example, blood glucose test instruments, when designing such apparatus would reasonably be expected or motivated to look to travel containers for pet food and water. The combination of elements from non-analogous sources, in a manner that reconstructs the Appellants'

invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness. The Examiner has conceded that none of Holmes I, Holmes II or Kelly discloses or suggests the claimed yieldable locking positions for the handle with respect to the housing. Magnant discloses one yieldable locking position for the handle with respect to the housing, not a number of them. Further, Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 26 based upon the combination of any of Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### CLAIM 27

Claim 27 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Further, claim 27 recites “a non-yieldable locking position of the handle with respect to the housing.” Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. Further, none of Holmes I, Holmes II, Kelly or Magnant discloses or suggests a handle having a “non-yieldable locking position . . . with respect to the housing.” Magnant neither discloses nor suggests “a non-yieldable locking position of the handle with respect to the housing.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 27 based upon the combination of any of Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### CLAIM 28

Claim 28 depends from claim 27, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons set forth above with regard to claims 26 and 27. Further, claim 28 requires that “the handle include[ ] a feature for engagement with the cradle when the cradle engages the accessory box and the handle is in the non-yieldable locking position.” Nowhere does Holmes I, Holmes II or Kelly disclose or suggest having a feature able to engage any cradle, and specifically for engaging such a cradle when “the cradle engages the accessory box and the handle is in the non-yieldable locking position” as recited in claim 28. Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 28 based upon the combination of any of

Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### CLAIM 29

Claim 29 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Further, claim 29 requires “a cradle for receiving [an] instrument, and an accessory box for receiving the cradle,” the accessory box including “a drawer accessible from two opposite sides of the accessory box, the drawer including a stop for reducing the likelihood of accidental disengagement of the drawer from the accessory box when the accessory box is withdrawn from either of said two opposite sides.” Again, contrary to the Examiner’s position, the drawer in Holmes I and Holmes II is only accessible from one side of the accessory box. Kelly neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 29. Magnant neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 29. Further, Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 29 based upon the combination of any of Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### CLAIM 30

Claim 30 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claim 26. Further, claim 30 requires that “the accessory box include[ ] a drawer accessible from two opposite sides of the accessory box, the drawer including latches to reduce the likelihood of inadvertent opening of the drawer.” Again, contrary to the Examiner’s position, the drawer in Holmes I and Holmes II is only accessible from one side of the accessory box. Kelly neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 30. Magnant neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 30. Further, Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 30 based upon the combination of any of Holmes I, Holmes II or Kelly with

Magnant is in error, and should be reversed.

#### CLAIM 31

Claim 31 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claim 26. Further, claim 31 requires that “one of the ends include[ ] a button which is yieldably urged into engagement with one of a number of depressions which define the yieldable locking positions of the handle.” Nowhere does any of Holmes I, Holmes II, Kelly or Magnant disclose or suggest an “end[ ] includ[ing] a button which is yieldably urged into engagement with one of a number of depressions which define the yieldable locking positions of the handle.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 31 based upon the combination of any of Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### CLAIM 32

Claim 32 depends from claim 31, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26 and 31. Further, claim 32 requires that “one of the ends further include[ ] an opening which defines a non-yieldable locking position of the handle.” Nowhere does any of Holmes I, Holmes II, Kelly or Magnant disclose or suggest that “one of the ends further include[ ] an opening which defines a non-yieldable locking position of the handle.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 32 based upon the combination of any of Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### CLAIM 33

Claim 33 depends from claim 31, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated

above with respect to claims 26 and 31. Further, claim 33 requires that “the bottoms of the depressions [be] formed to include ramps to permit force on the handle to move the handle among the yieldable locking positions defined by the depressions.” Nowhere does any of Holmes I, Holmes II, Kelly or Magnant disclose or suggest that “the bottoms of the depressions [be] formed to include ramps to permit force on the handle to move the handle among the yieldable locking positions defined by the depressions.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 33 based upon the combination of any of Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### CLAIM 34

Claim 34 depends from claim 32, which depends from claim 31, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26, 31 and 32. Further, claim 34 requires that the “opening include[ ] a sidewall which defines the non-yieldable locking position, the sidewall being configured to permit locking of the handle in the non-yieldable locking position.” Nowhere does any of Holmes I, Holmes II, Kelly or Magnant disclose or suggest an “opening includ[ing] a sidewall which defines the non-yieldable locking position, the sidewall being configured to permit locking of the handle in the non-yieldable locking position.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 34 based upon the combination of any of Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### CLAIM 35

Claim 35 depends from claim 34, which depends from claim 32, which depends from claim 31, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26, 31, 32 and 34. Further, claim 35 requires that the “opening permit[ ] access to the

button to permit movement of the handle from the non-yieldable locking position.” Nowhere does any of Holmes I, Holmes II, Kelly or Magnant disclose or suggest an “opening permit[ing] access to [a] button to permit movement of the handle from the non-yieldable locking position.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 35 based upon the combination of any of Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### CLAIM 36

Claim 36 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claim 26. Further, claim 36 requires that “at least one of the handle and the cradle include[ ] a feature for engagement with the other of the cradle and the handle when the cradle engages the accessory box and the handle is in the non-yieldable locking position.” None of Holmes I, Holmes II or Kelly discloses or suggests “at least one of the handle and the cradle include[ing] a feature for engagement with the other of the cradle and the handle when the cradle engages the accessory box and the handle is in the non-yieldable locking position.” Magnant is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Magnant. The rejection of claim 36 based upon the combination of any of Holmes I, Holmes II or Kelly with Magnant is in error, and should be reversed.

#### III. NO COMBINATION OF HOLMES I OR HOLMES II OR KELLY WITH BAUMGARTNER WOULD HAVE RENDERED THE PRESENT CLAIMS 35 U. S. C. § 103 OBVIOUS

The Examiner rejected claims 26-36 under 35 U. S. C. § 103 based upon the combination of any of Holmes I or Holmes II or Kelly with Baumgartner. Again, the Examiner concedes that “[Holmes I, Holmes II and Kelly] are silent to the claimed ‘yieldable locking positions for the handle with respect to the housing’,” and Appellants’ previous arguments concerning the non-obviousness of claims 26-36 over Holmes I, Holmes II and Kelly are incorporated here by reference. Baumgartner relates to handles for handling lead-

acid vehicle batteries.

Starting, lighting and ignition (SLI) batteries such as are typically used in automotive, recreational and other applications are heavy, cumbersome and usually require two hands for carrying. The desirability of providing such batteries with attachable/detachable handles for facilitating carrying, placement and retrieval of such batteries has long been known. A variety of designs have been proposed. For example, U.S. Pat. No. 4,673,625 to McCartney et al. discloses a one-piece molded plastic handle which is attachable/detachable to the battery by displacement in a direction parallel to the end walls of the battery and which can pivot between a carrying position above the battery to a storage position alongside the battery.

Further, robotics are being used in a variety of applications in the automotive and recreational vehicle industry. In certain situations, it has been found desirable to utilize robotics to transport a battery from a supply source, such as a pallet, to the installed position in the vehicle. Utilizing robotics for such an application requires a handle that can be maintained in a position allowing enough space between the handle and cover for installation with the robotics, while, at the same time, allowing, after installation into the vehicle, the ability to readily move the handle to an out-of-the-way service position. Thus, a multiple-position handle is required since space in the vehicle (typically under-the-hood) is limited so that the upright position used for transporting the battery becomes unsuitable once the battery is installed in the vehicle. While the use of robotics is highly desirable, none of the existing handle designs can satisfy the diverse needs for applications of this type.

It is accordingly an object of the present invention to provide a battery and a handle wherein the handle is capable of being locked in an upright position and yet, after installation into a vehicle or the like, can be readily moved to a service position alongside the battery.

A further and more specific object of this invention is to provide a battery of this type wherein lifting the battery with the handle in the upright position enhances locking the handle in such upright position whereas an appropriate downward force on the handle allows the handle to be readily moved from the locked upright position to the service position.

Yet another object of the present invention is to provide a battery of this type wherein the container and handle can be readily molded from plastic materials conventionally used for lead-acid batteries.

A still further object of this invention provides a battery of this type wherein the handle can be easily manually assembled onto the battery and placed in the locked upright position.

Baumgartner, col. 1, lines 9-61. In Baumgartner, stationary buttons 20 are provided on shafts 22 at each of two opposite sides or ends of a battery container 12. Buttons 20 are provided with locking tabs 24. A flexible handle 26 includes apertures 36 including yieldable locking cutouts 40 having constrictions 46 and locking tabs 52 defining a locking groove 54 between them. Handle 26 is in an upright, battery transporting orientation (illustrated in Baumgartner's Fig. 5) when the shafts 22 are in cutouts 40. Handle 26 also includes apertures 42 connected by slides 44 to apertures 36 so that the handle can be oriented in a service position (illustrated in Baumgartner's Fig. 6). Movement between these positions requires manipulation of Baumgartner's handle 26, but no manipulation of Baumgartner's buttons 20.

Again, the present claims relate to structures for "[a] healthcare data management system for use with an instrument for determining the concentration of a medically significant component of a body fluid," such as, for example, a glucose test instrument for determining the glucose concentration of human blood. The test for determining whether prior art is analogous for the purpose of determining whether the art can appropriately serve as a basis for a 35 U. S. C. §103 rejection is set forth above, and is incorporated again here by reference.

#### CLAIM 26

Continuing with the analysis, then, among other limitations, claim 26 specifically requires

an accessory box for receiving [a] cradle, the accessory box including a housing and a carrying handle pivotally coupled to the housing, the carrying handle having two ends, one of the ends including a number of yieldable locking positions for the handle with respect to the housing.

To again paraphrase the Federal Circuit in *Oetiker*, patent examination is necessarily conducted by hindsight, with complete knowledge of the applicant's invention, and the courts have recognized the subjective aspects of determining whether an inventor would reasonably be motivated to go to the field in which the examiner found the reference, in order to solve the problem confronting the inventor. We have reminded ourselves that it is necessary to consider "the reality of the circumstances," *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979) - in other words, common sense - in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor. It has not been shown, nor do Appellants believe that it can be shown, that a

person of ordinary skill in the art of healthcare data management systems for use with, for example, blood glucose test instruments, would reasonably be expected or motivated to look to the vehicle battery art for guidance. The combination of elements from non-analogous sources, in a manner that reconstructs the Appellants' invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness. The Examiner has conceded that none of Holmes I, Holmes II or Kelly discloses or suggests the claimed yieldable locking positions for the handle with respect to the housing. Baumgartner discloses one yieldable locking position for the handle with respect to the housing, not a number of them.

[A]n electric storage battery includ[es] a container having side and end walls, a cover attached to the container and a handle having a central portion for transporting the battery and two arms for connection to the two side or two end walls of the container. The container and the handle have connection means which provide an upright position for the handle where the central portion of the handle is positioned above the cover of the battery for transporting and installing the battery and a service position wherein the central portion of the handle is positioned alongside the battery. A locking means is associated with the container and handle for locking the handle in the upright position, yet allowing the handle to be readily manually displaced from the locked upright position when it is desired, most typically after installation, to move the handle from the upright to the service position.

Baumgartner, col. 1, line 67-col. 2, line 16. Further, Baumgartner is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Baumgartner. The rejection of claim 26 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 27

Claim 27 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Further, claim 27 recites "a non-yieldable locking position of the handle with respect to the housing." Baumgartner is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Baumgartner. Further, none of Holmes I, Holmes II, Kelly or Baumgartner discloses or suggests a handle having a "non-yieldable locking position . . . with respect to the housing." That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be

disclosed or suggested by any combination of them. The rejection of claim 27 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 28

Claim 28 depends from claim 27, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons set forth above with regard to claims 26 and 27. Further, claim 28 requires that “the handle include[ ] a feature for engagement with the cradle when the cradle engages the accessory box and the handle is in the non-yieldable locking position.” Nowhere does Holmes I, Holmes II, Kelly or Baumgartner disclose or suggest having a feature able to engage any cradle, and specifically for engaging such a cradle when “the cradle engages the accessory box and the handle is in the non-yieldable locking position” as recited in claim 28. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Baumgartner is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Baumgartner. The rejection of claim 28 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 29

Claim 29 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least on this basis. Further, claim 29 requires “a cradle for receiving [an] instrument, and an accessory box for receiving the cradle,” the accessory box including “a drawer accessible from two opposite sides of the accessory box, the drawer including a stop for reducing the likelihood of accidental disengagement of the drawer from the accessory box when the accessory box is withdrawn from either of said two opposite sides.” Again, contrary to the Examiner’s position, the drawer in Holmes I and Holmes II is only accessible from one side of the accessory box. Kelly neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 29. Baumgartner neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 29. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support

his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 29 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 30

Claim 30 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claim 26. Further, claim 30 requires that “the accessory box include[ ] a drawer accessible from two opposite sides of the accessory box, the drawer including latches to reduce the likelihood of inadvertent opening of the drawer.” Again, contrary to the Examiner’s position, the drawer in Holmes I and Holmes II is only accessible from one side of the accessory box. Kelly neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 30. Baumgartner neither discloses nor suggests any drawer, and specifically does not disclose any drawer which is “accessible from two opposite sides” of any accessory box, all as recited in claim 30. That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. The rejection of claim 30 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 31

Claim 31 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claim 26. Further, claim 31 requires that “one of the ends include[ ] a button which is yieldably urged into engagement with one of a number of depressions which define the yieldable locking positions of the handle.” Nowhere does any of Holmes I, Holmes II, Kelly or Baumgartner disclose or suggest an “end[ ] includ[ing] a button which is yieldably urged into engagement with one of a number of depressions which define the yieldable locking positions of the handle.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Baumgartner is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Baumgartner. The rejection of claim 31 based upon the combination of any of Holmes

I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 32

Claim 32 depends from claim 31, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26 and 31. Further, claim 32 requires that “one of the ends further include[ ] an opening which defines a non-yieldable locking position of the handle.” Nowhere does any of Holmes I, Holmes II, Kelly or Baumgartner disclose or suggest that “one of the ends further include[ ] an opening which defines a non-yieldable locking position of the handle.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Baumgartner is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Baumgartner. The rejection of claim 32 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 33

Claim 33 depends from claim 31, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26 and 31. Further, claim 33 requires that “the bottoms of the depressions [be] formed to include ramps to permit force on the handle to move the handle among the yieldable locking positions defined by the depressions.” Nowhere does any of Holmes I, Holmes II, Kelly or Baumgartner disclose or suggest that “the bottoms of the depressions [be] formed to include ramps to permit force on the handle to move the handle among the yieldable locking positions defined by the depressions.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Baumgartner is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Baumgartner. The rejection of claim 33 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 34

Claim 34 depends from claim 32, which depends from claim 31, which

depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26, 31 and 32. Further, claim 34 requires that the “opening include[ ] a sidewall which defines the non-yieldable locking position, the sidewall being configured to permit locking of the handle in the non-yieldable locking position.” Nowhere does any of Holmes I, Holmes II, Kelly or Baumgartner disclose or suggest that the “opening include[ ] a sidewall which defines the non-yieldable locking position, the sidewall being configured to permit locking of the handle in the non-yieldable locking position.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Baumgartner is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Baumgartner. The rejection of claim 34 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 35

Claim 35 depends from claim 34, which depends from claim 32, which depends from claim 31, which depends from claim 26, and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claims 26, 31, 32 and 34. Further, claim 35 requires that the “opening permit[ ] access to the button to permit movement of the handle from the non-yieldable locking position.” Nowhere does any of Holmes I, Holmes II, Kelly or Baumgartner disclose or suggest that the “opening permit[ ] access to the button to permit movement of the handle from the non-yieldable locking position.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Baumgartner is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Baumgartner. The rejection of claim 35 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### CLAIM 36

Claim 36 depends from claim 26 and is entitled to favorable consideration, culminating in allowance, at least for the reasons stated above with respect to claim 26. Further, claim 36 requires that “at least one of the handle and the cradle include[ ] a feature for engagement with the other of the cradle and the handle when the cradle engages the

accessory box and the handle is in the non-yieldable locking position.” None of Holmes I, Holmes II, Kelly or Baumgartner discloses or suggests “at least one of the handle and the cradle includ[ing] a feature for engagement with the other of the cradle and the handle when the cradle engages the accessory box and the handle is in the non-yieldable locking position.” That which is neither disclosed nor suggested by any of the references upon which the Examiner relies to support his rejection cannot fairly be said to be disclosed or suggested by any combination of them. Further, Baumgartner is not analogous art, and thus it would not have been 35 U. S. C. § 103 obvious to combine any of Holmes I, Holmes II or Kelly with Baumgartner. The rejection of claim 36 based upon the combination of any of Holmes I, Holmes II or Kelly with Baumgartner is in error, and should be reversed.

#### IV. SUMMARY CONCLUSIONS

The 35 U. S. C. § 103 rejection of claims 26-36 based on Holmes I or Holmes II or Kelly is erroneous. The 35 U. S. C. § 103 rejection of claims 26-36 based upon the combination of any of Holmes I or Holmes II or Kelly with Magnant is erroneous. Finally, the 35 U. S. C. § 103 rejection of claims 26-36 based upon the combination of any of Holmes I or Holmes II or Kelly with Baumgartner is erroneous. Reversal of those rejections is respectfully requested.

Respectfully submitted,



Richard D. Conard  
Attorney Reg. No. 27321  
Attorney for Appellants

Indianapolis, Indiana 46204  
(317) 231-7285

INDS02 RDC 810408



## CLAIMS APPENDIX

26. A healthcare data management system for use with an instrument for determining the concentration of a medically significant component of a body fluid, the system including a cradle for receiving the instrument, and an accessory box for receiving the cradle, the accessory box including a housing and a carrying handle pivotally coupled to the housing, the carrying handle having two ends, one of the ends including a number of yieldable locking positions for the handle with respect to the housing.

27. The apparatus of claim 26 further including a non-yieldable locking position of the handle with respect to the housing.

28. The apparatus of claim 27 wherein the handle includes a feature for engagement with the cradle when the cradle engages the accessory box and the handle is in the non-yieldable locking position.

29. The apparatus of claim 26 wherein the accessory box includes a drawer accessible from two opposite sides of the accessory box, the drawer including a stop for reducing the likelihood of accidental disengagement of the drawer from the accessory box when the accessory box is withdrawn from either of said two opposite sides.

30. The apparatus of claim 26 wherein the accessory box includes a drawer accessible from two opposite sides of the accessory box, the drawer including latches to reduce the likelihood of inadvertent opening of the drawer.

31. The apparatus of claim 26 wherein one of the ends includes a button which is yieldably urged into engagement with one of a number of depressions which define the yieldable locking positions of the handle.

32. The apparatus of claim 31 wherein said one of the ends further includes an opening which defines a non-yieldable locking position of the handle.

33. The apparatus of claim 31 wherein the bottoms of the depressions are formed to include ramps to permit force on the handle to move the handle among the yieldable locking positions defined by the depressions.

34. The apparatus of claim 32 wherein the opening includes a sidewall which defines the non-yieldable locking position, the sidewall being configured to permit locking of the handle in the non-yieldable locking position.

35. The apparatus of claim 34 wherein the opening permits access to the button to permit movement of the handle from the non-yieldable locking position.

36. The apparatus of claim 26 wherein at least one of the handle and the cradle includes a feature for engagement with the other of the cradle and the handle when the

cradle engages the accessory box and the handle is in the non-yieldable locking position.

## EVIDENCE APPENDIX

No evidence was submitted pursuant to 37 C. F. R. §§ 1.130, 1.131 or 1.132.

## RELATED PROCEEDINGS APPENDIX

There are no related proceedings.

INDS02 RDC 810408